



**CITY DEVELOPMENT DEPARTMENT-PLANNING
ZONING BOARD OF ADJUSTMENT MEETING MINUTES
COUNCIL CHAMBERS, CITY HALL BUILDING
AUGUST 12, 2013
1:30 P.M.**

Vice-Chairman Garland called the meeting to order at 1:34 p.m.

The following Board Members answered roll call:

Mr. Robert Garland, Vice-Chairman

Mr. Ken Gezelius

Mr. Sam Barela

Mr. Rick Cordova

Mr. Jeff Gonzalez

Mr. Michael Bray

Mr. Lamar Skarda

The following City Staff were present:

Ms. Linda Castle, City Development Department, Planning, Senior Planner,
ZBA Secretary

Mr. Alex Hoffman, City Development Department, Planning, Lead Planner

Mr. Juan Estala, City Development Department, Building Permits &
Inspections, Chief Plans Examiner

Ms. Kristen Hamilton, City Attorney's Office, Assistant City Attorney

CHANGES TO THE AGENDA

1. Agenda item #3 – PZBA13-00023, 5624 Sarah Anne Avenue

Applicant's representative requests postponement to the next regularly scheduled ZBA meeting.

2. Agenda item #4 – PZBA13-00024, 1901 Roswell Avenue

Applicant requests Special Exception J (Carport over a Driveway) postponed to the next regularly scheduled ZBA meeting.

MOTION:

**Motion made by Mr. Bray, seconded by Mr. Gezelius AND UNANIMOUSLY
CARRIED TO APPROVE THE CHANGES TO THE AGENDA.**

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ITEM 1:

PZBA13-00021 1633 James Chisum Drive Jose Joaquin & Irma M. Paredes Applicants request a Special Exception under Section 2.16.050 F (Side Street Yard) in an R-3 (Residential) zone. This would permit a new 21'8" by 20' carport that is proposed to be located in the side street yard setback to within 5 feet of the side street property line. The required side street yard setback in the R-3 zone district is 10 feet. The applicants are requesting a reduction in the side street yard setback in order to add a carport in the side street yard setback. The site plan shows that the carport will be accessed from the existing driveway in the front. Traffic Engineering reviewed the request and notes no objections to the reduced side street yard setback and that the applicant cannot expand the existing driveway cut on James Chisum Drive to accommodate the carport.

STAFF RECOMMENDATION IS FOR APPROVAL OF THE REQUEST AS IT MEETS THE REQUIREMENTS OF THE SPECIAL EXCEPTION F, WITH THE CONDITION THAT THE DRIVEWAY CUT ON JAMES CHISUM SHALL NOT BE EXPANDED.

Ms. Castle gave a PowerPoint presentation and added the applicant is also requesting a 50% reduction of the 10 feet required side street yard setback. Staff did not receive any phones in favor of or opposition to the request.

Vice-Chairman Garland asked if anyone in the audience wished to speak in favor of or opposition to the request. *There was no response.*

Ms. Irma Paredes, applicant, was present. She noted the proposed carport will accommodate two vehicles; additionally, vehicles will enter through the existing driveway.

MOTION:

Motion made by Mr. Bray, seconded by Mr. Gonzalez TO ACCEPT STAFF RECOMMENDATIONS.

Prior to the vote, Mr. Barela requested an amendment to the motion as follows:

"That the carport remain open on all three sides, with the exception of the existing rock wall. Therefore, the carport cannot be enclosed at all because of the encroachment into the side street yard setback."

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Vice-Chairman Garland clarified that should the property owner sell the home, the new owner(s) could not enclose the carport.

Mr. Skarda noted the definition of a carport is “open on three sides.”

MOTION:

Motion made by Mr. Bray, seconded by Mr. Gonzalez AND UNANIMOUSLY CARRIED TO ACCEPT STAFF RECOMMENDATIONS.

ITEM 2:

PZBA13-00022 7213 Kiowa Creek Drive Palo Verde Homes
Applicant requests a Special Exception under Section 2.16.050 G (Builder Error, Side Yard Setback) in an R-3A/c (Residential/conditions) zone. This would allow a new single-family dwelling that is built encroaching 0.1 feet into the westerly side yard setback and is located to within 4.9 feet of the side property line. The required side yard setback is 5 feet in the R-3A zone district. The applicant is requesting the builder error for the 1.2” encroachment into the westerly side setback for an existing single-family dwelling.

STAFF RECOMMENDATION IS FOR APPROVAL OF THE REQUEST FOR THE BUILDER ERROR, WITH THE CONDITION THAT THE PORTION OF THE STRUCTURE LOCATED LESS THAN 5 FEET TO THE SIDE PROPERTY LINE SHALL BE OF FIRE RATED CONSTRUCTION, PER CHAPTER 6, 2009 INTERNATIONAL BUILDING CODE, ISSUES OF FIRE AND SAFETY, TABLE 602, WHICH REQUIRES FIVE (5) FEET BETWEEN BUILDINGS; OTHERWISE, THE BUILDINGS MUST BE FIRE CODE RATED.

Ms. Castle gave a PowerPoint presentation and noted Staff did not receive any phone calls in favor of or in opposition to the request. Per the *Builder Error Log*, Palo Verde Homes had not submitted a builder error request/application within the last 12 months. Furthermore, Palo Verde Homes has already stated that the portion of the structure located less than 5 feet to the side property line has been fire rated and has been passed by the Inspector.

Mr. Gonzalez clarified the Special Exception request is to legalize the existing structure.

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Mr. Edgar Montiel, representing Palo Verde Homes, concurred.

Mr. Bray asked Mr. Montiel if this request would, in any way, affect the structure abutting to the left. Due to there being less than 10 feet between the structures, Mr. Bray wondered if a portion of the structure to the left should also be fire rated.

Mr. Montiel responded no; just his structure required the fire rating. He clarified should the structure encroach into the five feet side yard setback then that structure must also be fire rated.

Mr. Bray clarified so it's not the cumulative ten feet; it's the five feet from the center property line.

Mr. Montiel concurred.

Discussion amongst Staff and Board regarding Chapter 6, 2009 International Building Code, Issues of Fire and Safety, Table 602

Mr. Gezelius requested clarification regarding the Staff Recommendation language *"Table 602, which requires five (5) feet between buildings."*

Mr. Montiel noted the ten (10) feet is between structures.

Vice-Chairman Garland added it's five (5) feet to the centerline.

Mr. Gezelius understood that the side setback was to allow ten (10) feet between buildings for fire purposes.

Mr. Cordova suggested correcting the language to read *"setback"*.

Mr. Barela suggested correcting the language to read *"property line"*. He suggested the language read as follows *"five (5) feet between the property line and the building of the property, ten (10) feet between the buildings."*

Mr. Gezelius added which would be ten (10) feet.

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Mr. Barela clarified which would be ten (10) feet between the buildings.

Mr. Bray noted the language was just an explanation of Staff's recommendation; therefore, it would not impact the Board's recommendation.

MOTION:

Motion made by Mr. Bray, seconded by Mr. Gonzalez AND UNANIMOUSLY CARRIED TO APPROVE.

ITEM 3:

PZBA13-00023 5624 Sara Anne Avenue Gladys M. Gardiner
POSTPONED TO THE NEXT REGULARLY SCHEDULED ZBA MEETING

ITEM 4:

PZBA13-00024 1901 Roswell Road Elena De La Rosa
Applicant requests Special Exceptions under Section 2.16.050 C (Rear Yard Setback) and Section 2.16.050 J (Carport over a Driveway) in an R-3 (Residential) zone. This would allow an existing 19' by 22'3" addition of which a 19' by 4'8" (90 square feet) portion encroaches into the required rear yard setback and is located to within 18' of the rear property line. The required cumulative front and rear yard setback total in the R-3 zone district is 50 feet. The applicant was cited for building without permits and is requesting to legalize an addition which encroaches in the rear yard setback.

Agenda item #4 – PZBA13-00024, 1901 Roswell Avenue

Applicant requests to postpone the Special Exception J (Carport over a Driveway) to the next regularly scheduled ZBA meeting.

Mr. Bray wondered if the request for the carport over a driveway included the second curb cut.

Mr. Castle responded Staff will research whether or not the property owner was issued a permit for the curb cut. If not, the property owner will be required to submit documentation for a permit for the second curb cut.

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Ms. Castle gave a PowerPoint presentation regarding request for a Special Exception C (Rear Yard Setback) in an R-3 (Residential) zone.

STAFF RECOMMENDATION IS FOR APPROVAL OF THE REQUEST AS IT MEETS THE REQUIREMENTS OF THE SPECIAL EXCEPTION C (REAR YARD SETBACK).

Vice-Chairman Garland wondered if Staff had reviewed the other accessory structures and the canopy between the addition and the wall.

Ms. Castle responded yes, Staff determined it was not an accessory structure. Furthermore, property owners are allowed 400 square feet of accessory structure in any situation, the garage is shown as being 380 square feet.

Mr. Bray referred to the PowerPoint photo of the garage and compared that photo to the site plan drawing. He noted that the photo shows the overhang, with the gutters, to be encroaching onto the property next door. He was concerned that the photo did not match the site plan drawing. He wondered what other aspects of the site plan drawing might be incorrect.

Mr. Skarda asked Staff if the rock wall was the property line.

Ms. Castle responded Staff did not have a survey. The site plan drawing shows the garage as being 1'10" from the center of the rock wall, not the overhang. Per the code, property owners may not shed water onto neighboring properties. She stated the property owner would have to get a permit for the garage.

Vice-Chairman Garland noted the gutters are right on the property line, preventing the watershed from going onto the neighbor's property.

Mr. Skarda asked Staff how far from the side property line would the garage need to be. He assumed the garage was built the same time the house was built.

Ms. Castle was unsure when garage was added; however, she stated that the construction on the side of the garage would have to be fire rated.

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Mr. Bray explained the garage is located ten feet from the main house. He thought the garage could be built to 0" lot line.

Ms. Castle concurred and added as long as the construction on the side of the garage was fire rated.

Mr. Bray added *and that the garage does not overhang*.

Mr. Daniel Lopez, representing the applicant, was present.

Vice-Chairman Garland reiterated the garage does not appear to be fire rated and is within the five feet.

Mr. Skarda clarified the action the Board would take is to, along with the change in the rear yard setback, ensure the garage is fire rated.

MOTION:

Motion made by Mr. Skarda, seconded by Mr. Bray TO APPROVE.

Prior to the vote, Mr. Gonzalez clarified that the motion is to approve the rear setback request to the existing addition. He reiterated that the request for the carport over a driveway had been postponed to the next regularly scheduled ZBA meeting.

Vice-Chairman Garland clarified the motion is to approve the rear setback request and, due to the concerns of the Board, the garage has become an issue as it does not appear to be fire rated and portions of the wood are exposed. He would like the Board to remedy the garage concerns at the same time the rear yard setback request is approved.

Mr. Skarda asked Staff if the back of the garage should be fire rated as well.

Mr. Lopez noted that the rear rock wall is not on the property line; the rear rock wall is approximately six or seven feet away from the rear property line.

Per the site plan, Mr. Estala explained that accessory structures are allowed to abut the property line; however, the accessory structure must be fire rated. In this case, the rear of the garage is 7'6" from the property line; therefore, only the side of the garage, abutting the rock wall, must be fire rated.

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MOTION:

Motion made by Mr. Skarda, seconded by Vice-Chairman Garland AND UNANIMOUSLY CARRIED TO APPROVE THE SPECIAL EXCEPTION C (REAR YARD SETBACK) WITH THE FIRE PROOFING OF THE SIDE OF THE GARAGE.

ITEM 5:

PZBA13-00025 1820 Myrtle Avenue Boyles Bobby J Properties LLC
Applicant requests Special Exceptions under Section 2.16.050 B (Two or More Non-conforming) in an M-1 (Manufacturing) zone. This would allow the rebuilding of a 50' by 120' warehouse which is proposed to be located to within 0 feet of the front property line and to within 0 feet of the rear property line. The required front yard setback is 15 feet and the required rear yard setback is 10 feet in the M-1 zone district. The applicant is requesting to rebuild a warehouse structure originally built to within 0 feet of the front and rear property lines. The structure was more than 50 percent destroyed by fire on October 30, 2012. The Central Appraisal District lists the structure as existing since 1970; however, no variance or special exception has been requested or granted to this property by the ZBA for the encroachments. There are two legal nonconforming properties across the street, existing in the 1956 aerial and still existing today that are built to the front and rear property lines: 1830 Myrtle and 1831 Myrtle. The applicant's representative has been requested to contact the water and electric utility companies to determine that there are no utility easements on the property.

STAFF RECOMMENDATION IS FOR APPROVAL OF THE REQUEST AS IT MEETS THE REQUIREMENTS OF THE SPECIAL EXCEPTION B.

Ms. Castle gave a PowerPoint presentation and noted Staff did not receive any phone calls in favor of or in opposition to the request. She added that the applicant's representative previously contacted the water, electric, and gas utility companies. The utility companies responded they had no issue with the request.

Ms. Laura Monteleone, representing the applicant, was present.

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Ms. Castle clarified that, due to the two legal nonconforming properties across the street, the special exception allows the structure to encroach onto the front and rear property lines. Furthermore, the two legal nonconforming properties across the street existed prior to 1956.

MOTION:

Motion made by Mr. Gezelius, seconded by Mr. Skarda AND UNANIMOUSLY CARRIED TO APPROVE.

Other Business

6. Discussion regarding October 1, 2013 term expiration date for Zoning Board of Adjustment members.

Ms. Castle asked the Board Members, whose term will expire October 1, 2013, if they would please send her an email if they are interested in continuing to serve on the Board, she would then inform the City Council Representative.

Mr. Skarda noted that at the time this issue was discussed previously, those Board Members who were present all agreed to continue serving on the Board, except for Mr. Gonzalez who was not present at that particular meeting.

Ms. Castle reiterated that she would like an email from those Board Members who would like to continue to serve.

7. Approval of Minutes: July 8, 2013

Vice-Chairman Garland asked if the Board if they had any additions, corrections and/or revisions.

MOTION:

Motion made by Mr. Bray, seconded by Mr. Gezelius AND UNANIMOUSLY CARRIED TO APPROVE THE JULY 8, 2013 MINUTES.

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MOTION:

*Motion made by Mr. Gezelius, seconded by Mr. Bray AND UNANIMOUSLY
CARRIED TO ADJOURN THE MEETING AT 2:07 P.M*

Linda Castle, Senior Planner

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